IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13589 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTILAL RAGHAVJIBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13589 of 2004

MR UMANG K CHOKSI for Petitioner No. 1

MR BHATE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 14/12/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the

legality and validity of the order passed by respondent No.3 dated 31.7.2004, by which, respondent No.3 in exercise of the powers under Section 32-A of the Bombay Stamp Act has passed the order directing the petitioner to pay the amount of Rs.64,740/- by way of deficit stamp duty and Rs.250/- by way of penalty in all Rs.64,900/-.

#. Mr.Choksi, learned advocate appearing for the petitioner, has submitted that the impugned order dated 31.07.2004 is in violation of the principles of natural justice, as, the petitioner was not served with the notice under Rule 4 of the Market Value Rules, 1984, (`the Rules' for short) as, the petitioner had changed his residence and the notice was issued by respondent no. 3 at the old address which is not disputed by Mr.Mengdey learned A.G.P.

#. It appears that the impugned order came to be passed against the petitioner on the basis that the petitioner is served with the notice under Rule 4 and that he has not remained present, ex-parte order came to be passed. In view of the fact that the notice under Rule 4 of the Rules was issued at the old address of the petitioner which was returned with the endorsement "left" and therefore, if on non-receipt of the notice if the petitioner had not remained present, no fault can be found with the petitioner. Under the circumstances, the impugned order dated 31.07.2004 is required to be quashed and set aside only on the ground that the petitioner was not served with the notice under Rule 4 of the Rules which is held to be mandatory by the decision of the Full Bench of this Court.

#. Under the circumstances, impugned order dated 31.07.2004 issued by respondent no. 3 is hereby quashed and set aside. The matter is remanded to respondent no. 3 for passing the order afresh on its own merits and in accordance with law after giving opportunity to the petitioner and after serving the notice under Rule 4 of the Rules at the new address which is stated in the cause title as well as in the order dated 31.07.2004.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)